Supreme Court, U.S.
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85-1393
No. .....

In The
Supreme Court of the United States
October Term, 1985

ROBERT E. BELL, PHIL PETERS, MANFORD BURRIS AND ARNOLD FELLER, INDIVIDUALLY, AND AS TAXPAYERS,

Petitioners,

vs.

CRAWFORD COUNTY, ARKANSAS; W. V. "BILL" TAYLOR, SELMA SELBY, DOYLE JOHNS, E. H. "BUSTER" PITCHFORD, C. J. NEWTON, DALE L. OWEN, THOMAS W. "BO" BUTLER, JOHN BENHAM, JOE CHAPEN, VERNON D. RUSSELL I, AND GLEN CLUCK, JUSTICES OF THE PEACE, AND COMPRISING THE QUORUM COURT OF CRAWFORD COUNTY, ARKANSAS; GEORGE WILLMUTH, COUNTY JUDGE; FREEDA McMASTER, COUNTY TREASURER; AND HAROLD LOYD, COUNTY CLERK,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE ARKANSAS SUPREME COURT

JOHN P. GILL
GILL, SKOKOS, SIMPSON, BUFORD & GRAHAM, P.A.
300 Superior Federal Building
Capitol at Broadway
Little Rock, Arkansas 72201
(501) 374-1107

Attorney for Petitioners

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

QUESTION PRESENTED

Whether the diversion to rural residents of the proceeds of a tax levied on city residents for a specific purpose violates the constitutionally guaranteed rights of due process and equal protection under Amendment 14 to the United States Constitution.

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The petitioners, Robert E. Bell, Phil Peters, Manford Burris, and Arnold Feller, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the Arkansas Supreme Court entered October 28, 1985.

OPINIONS BELOW

The opinion of the Arkansas Supreme Court appears in Appendix A hereto, and is reported at 287 Ark. 251, 697 S.W.2d 910 (1985). The opinion of the trial court is not reported and appears in Appendix B hereto.

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JURISDICTIONAL STATEMENT

The opinion of the Arkansas Supreme Court was rendered on October 28, 1985. The petition for rehearing was denied on December 9, 1985. This petition was filed within ninety (90) days of the denial of rehearing. Sup. Ct. R. 20.4. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3) (1982).

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CONSTITUTIONAL PROVISIONS INVOLVED

§ 1. [Citizenship—Due process of law—Equal protection.]—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

[Criminal actions—Provisions concerning—Due process of law and just compensation clauses.]—No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. V.

Levy and appropriation of taxes.—No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same; and no moneys arising from a tax levied for one purpose shall be used for any other purpose.

Ark. Const. art. 16, § 11.

Illegal exactions.—Any citizen of any county, city or town may institute suit in behalf of himself and all others interested, to protect the inhabitants thereof against the enforcement of any illegal exactions whatever.

Ark. Const. art. 16, § 13.

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STATEMENT OF THE CASE

In 1948, a special ad valorem tax was levied against the taxpayers of Crawford County, Arkansas to pay for the costs of constructing, equipping, and expanding a public county hospital. From 1948 until 1982, the hospital was operated as a non-profit institution when on February 1, 1982 the county leased the hospital to Humana Medical Centers, a private for-profit corporation, for a twenty-six (26) year period. Since 1948 approximately one-half (49.64%) of the ad valorem taxes in Crawford County have been paid on property within the limits of municipalities and approximately one-half (49.98%) of the residents of Crawford County reside within municipalities. The first five years of the lease were paid in advance and produced $2.5 million in revenues, with the remainder of the lease to result in $18.7 million in additional lease revenues. These funds were not used for health care purposes but were deposited directly into the County's general fund, and from there transferred to the county road fund. No county road lies within municipal boundaries and all county road funds were expended in rural areas.

This action was instituted by the mayors of four municipalities in Crawford County as individual taxpayers against the governing body of the county and various county officials. The mayors represent the interests of the municipal taxpayers who allege that the county was diverting the funds resulting from the leasing of the hospital to rural purposes; principally, rural roads. Specifically, the petitioners argued that the county illegally diverted funds and assets of the hospital constituting an illegal exaction under the Arkansas Constitution and in

violation of due process and equal protection under Amendments 5 and 14 of the United States Constitution.

At the trial court and without addressing the constitutional issues of due process and equal protection, the judge ruled that the lease fund and interest on the lease fund was the sole property of the county. This opinion was affirmed by the Arkansas Supreme Court. That opinion recognized the principle that a specific tax could not be diverted to a different purpose but held that the lease payments were the sole property of the county. The Arkansas Supreme Court likewise failed to address the constitutional issues of due process and equal protection.

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FEDERAL QUESTIONS RAISED

The question presented for review by this court was raised at the following stages and by the following methods:

The question was originally presented to the trial court by way of an amended complaint which specifically stated that the appropriation of the funds in question by Crawford County constituted a denial of due process and equal protection under amendments 5 and 14 of the United States Constitution. (R. 20). The trial court in its written opinion noted that the petitioners raised the contention that the diversion of the funds violated due process and equal protection under the United States Constitution. (R. 134); however, the trial court failed to specifically address that issue. At the appellate level, the petitioners again raised the question by citing in their brief

Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155 (1980) for the proposition that appropriation of the funds by the County violated the fifth and fourteenth amendments to the United States Constitution. Petitioner's Abstract and Brief at 181. In their petition for rehearing the petitioners specifically noted that the use of the funds by the county denied the municipal taxpayers the constitutional rights of due process and equal protection since the funds were for the use of all the taxpayers of the county and not just rural taxpayers. Again, however, the Arkansas Supreme Court failed to address this issue in its opinion.

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REASONS FOR GRANTING THE WRIT

Arkansas, like many other states, has been dominated by rural interests, a fact which this Court recognized in *Gray v. Sanders,* 372 U.S. 368 (1963). The issue of rural control over tax revenues remains unsettled. Through this petition for certiorari, this Court is confronted with a question of vast importance concerning the balance of rights between urban and rural residents which has not been touched upon by any federal court. The decision to grant or deny this petition will determine whether the proceeds of taxes benefitting both rural and municipal taxpayers may be diverted to a new and different purpose for the exclusive benefit of rural residents. Stated differently, are municipal residents constitutionally protected from rural dominance over taxes paid by municipal residents? Fundamental fairness demands the resolution of

this question whose existence is one of substantial federal importance.

The importance of this petition is borne out in the facts. For thirty years, municipal taxpayers of Crawford County, Arkansas paid property taxes for a county hospital to serve municipal as well as rural residents. Suddenly, the hospital was leased by the County, causing municipal (and rural) residents to pay higher hospital rates and cutting off municipal residents from any benefit of the tax, while at the same time rural residents were reaping all benefits of the tax. No longer are the funds being used for health care costs but are being diverted to a new purpose—county roads.

The facts are complicated somewhat since there are no other public health care needs or programs in the County, and the only alternative uses of the hospital lease revenues are either an expenditure for another purpose or refunding the lease revenues to the taxpayers. Due to the changes in ownership of property over the thirty-year period, it was stipulated that a tax refund was not practical. Therefore, the only available remedy is to expend the funds for another purpose benefitting all taxpayers.

The importance of granting certiorari is underscored by the recognition by this court that rural and urban interests do not coincide.[1] If allowed to appropriate the lease payments to its general funds, the county would expend the funds primarily for general rural purposes instead of health care. Since all of the voters in the county,

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[1]Historically, Arkansas county governments administer and govern only rural, and not municipal affairs, whereas city governments administer and govern municipal affairs.

urban and rural, approved the tax levy, the proceeds should be used for a purpose which benefits both urban and rural, and not just rural residents. The interests of the rural and urban citizens do not parallel one another. As our society becomes more and more urbanized, urban citizens will look to urban governments, such as cities and towns, to fulfill their needs. The county government now is less important in fulfilling urban governmental services.[2] Therefore, urban interests are to be afforded protection.

> How then can one person be given twice or ten times the voting power of another person in a statewide election merely because he lives in a rural area or because he lives in the smallest rural county? Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote . . . The idea that every voter is equal to every other voter in his state, when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions.

Gray v. Sanders, 372 U.S. 368, 379-80 (1963). *Gray* and other voting rights cases recognize that the interests of the rural and urban voter are not the same. To deny the urban citizen the fruits of his taxes by allowing appropriation of the hospital lease revenues for rural roads and other rural purposes, is no different than to deny the urban citizen the right to vote. This is especially true in this case, because the taxes were first approved by a vote of all county residents—both urban and rural. The

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[2]Indeed, the record in this case reflects that Crawford County officials historically discriminate against urban residents by administering only rural affairs and using county revenues only for rural purposes.

ultimate effect of the county's action is the disenfranchisement of the urban voter.

The urban voter, having voted for and paid the tax, must be afforded some measure of constitutional protection against such misappropriation. Otherwise, the urban voter's participation in the political process will be diluted merely because he is an urban resident. Dilution of the constitutional right to vote is as constitutionally defective as denying the right altogether, *Allen v. State Board of Elections,* 393 U.S. 544 (1969), and this important constitutional right should not be denied merely on the basis of the resident of the voter.

> To the extent that a citizens' right to vote is debased, he is that much less a citizen. The fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote. The complexions of societies and civilizations change, often with amazing rapidity. A nation once primarily rural in character becomes predominately urban. Representation schemes once fair and equitable become archaic and outdated. But the basic principle of representative government remains, and must remain, unchanged—the weight of a citizen's vote cannot be made to depend on where he lives. Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies.
>
> A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution's Equal Protection Clause. This is an essential part of the concept of a government of laws and not men.

Reynolds v. Sims, 377 U.S. 533, 567-68 (1964). Consequently, the urban property owner in Crawford County is

entitled to an appropriate share of the hospital revenues as the fruits of his self-imposed tax. He has contributed to the funding of the hospital and is now entitled to have the fund applied for the purpose for which it was intended or refunded to him.

Without exception, state courts universally hold that the proceeds of a tax levied for a specific purpose cannot be diverted to a different purpose. It is a rule of fundamental fairness that the citizens of a taxing unit be afforded the assurance that the levy of a special tax will be used for that particular purpose. "It is undisputed that tax revenues obtained from a special tax must be used for no other purpose than that stated in the proposition submitted to and approved by the electorate." *Hodnett v. Monroe City School Board,* 270 So.2d 598, 603 (La. Ct. App. 1972); *see e.g. McFarland v. Town of Bourbonnais,* 339 Ill. App. 228, 89 N.E.2d 849 (1950); *Wright v. Absolom,* 224 Ga. 6, 159 S.E.2d 413 (1968). These cases state a fundamental rule that no proceeds of a specific tax may be diverted to a different purpose. This same principle would require that the proceeds be used for that purpose or refunded to the taxpayers. The county cannot now divert the proceeds to a use which only benefits the rural taxpayers. Urban taxpayers must have the protection of a constitutionally guaranteed rule that prohibits a diversion of such proceeds to the exclusive benefit of only a segment of those who funded the hospital. This question should be resolved.

To allow a county government to divert the proceeds from the hospital purpose would be tantamount to allowing taking of property without just compensation. A similar case, *Webb's Fabulous Pharmacies, Inc. v. Beckwith,*

449 U.S. 155 (1980), held that a county government could not deduct from an interpleader fund the accrued interest on the fund. As stated in *Webb's,* the interest on an interpleaded fund follows the principal, and any appropriation of the interest by the county would be analogous to taking private property without due compensation. The interest, as the fruits of the principal, cannot be appropriated by the county to its own use. The same rule holds true in the present case. The lease fund, as fruits of the tax, must be used for medical care purposes or refunded to the taxpayers, and cannot be appropriated by the county for its own use. As early as 1901, this Court has recognized that taxes raised for a specific purpose are held in trust for that purpose, and the funds cannot be used for any other purpose. *City of New Orleans v. Fisher,* 180 U.S. 185 (1901). The county, as trustee of the tax payments, should not be allowed to appropriate the lease payments to just one class of beneficiaries—rural residents.

Only by granting this petition for certiorari can the rights of all the voters of the county be protected. The county, having appropriated the proceeds of a specific purpose tax to rural roads, has unconstitutionally denied the urban citizens of the county the due process and equal protection rights to which they are constitutionally entitled. Therefore, the petitioner respectfully requests this Court to grant this petition for certiorari and to grant all other proper relief.

Respectfully submitted,

GILL, SKOKOS, SIMPSON, BUFORD
& GRAHAM, P.A.
300 Superior Federal Building
Capitol at Broadway
Little Rock, Arkansas 72201
(501) 374-1107

By: /s/ JOHN P. GILL
Attorney for Petitioners

APPENDIX A

SUPREME COURT OF ARKANSAS

No. 85-36

October 28, 1985

ROBERT E. BELL, et al

.... APPELLANTS

VS.

CRAWFORD COUNTY, et al

.... APPELLEES

APPEAL FROM CRAWFORD COUNTY
CHANCERY COURT, # E-83-286

HON. WARREN O. KIMBROUGH, CHANCELLOR
LOUIS B. JONES, JR., SPECIAL JUSTICE

The court is being asked to construe provisions of the Arkansas Constitution, article 16, sections 9, 11 and 13, and amendments 13, 17 and 25 and thus jurisdiction arises under Rule 29 1. a.

Appellants are mayors of four municipalities in Crawford County (Van Buren, Alma, Mulberry, and Mountainburg) who are bringing a class action suit in their capacities as individual taxpayers against the quorum court and various officials of the county. The mayors are representing interests of the municipal taxpayers who allege they are not receiving their fair share of money resulting from three different funds and awarded by the chancellor to the county to be used for purposes to benefit all county residents. Municipal residents constitute approximately one-

half the county population, and property within corporate limits was taxed to raise about one-half of the ad valorem tax for the hospital. Therefore, appellants allege they should receive one-half the funds resulting from the bond surplus, lease fund, and interest.

Three funds are involved in this dispute: the bond surplus, the hospital lease fund, and the interest from the hospital lease fund. For 30 years, beginning in 1948, the county taxpayers paid an ad valorem tax to construct, equip, and expand a county hospital. The hospital was finished sooner than expected and an excess tax of $122,200 was collected, which all parties agree was an illegal exaction. The hospital was run on a non-profit basis until 1982 when the county leased it to Humana Medical Centers for 26 years. The first five years of the lease brought the county $2.5 million (lease fund); the remainder of the lease was to result in an additional revenue for the county of $18,775,000, according to the appellants. In addition to the rent, the lessee agreed to retire revenue bonds issued by the county in 1972 for improvements on the hospital which were to be paid from hospital revenues. The county put the $2.5 million lease fund on deposit, pending settlement of a government Hill-Burton repayment obligation. Interest from this fund (interest fund) goes into the county general fund and has been transferred to the county road fund.

The chancellor ruled that a refund to the taxpayers of the bond surplus was impossible due to the passage of time. Since the hospital was complete and managed by a for-profit corporation, there was no way the chancellor could apply the fund to a hospital-related activity. He

therefore found the best way to return the illegal exaction was to return it to the county general fund for use by all the taxpayers. The chancellor further found the lease fund and interest thereon to be property of the county and, since he found no evidence of Crawford County officials acting intentionally to discriminate against any segment of the taxpayers, he ruled the county had the proper authority to manage the money.

Appellants' first contention is that the use of the bond surplus and hospital lease fund (and the interest thereon) by the county is an illegal exaction; such funds are the property of the taxpayers and the county is a mere trustee. The hospital in question is or was the property of Crawford County having been financed by a local millage. Exclusive jurisdiction over such county owned hospitals rests with the county judge and quorum court. Ark. Const. art. 7, § 28; amendment 55, § 3; Ark. Stat. Ann. § 17-304 (Repl. 1980). These county officials, in conjunction with the County Hospital Board of Governors, have been given the right to sell or lease a county hospital. Ark. Stat. Ann. § 17-1504 (Repl. 1980).

This court has specifically ruled that the sale of a county hospital does not constitute an illegal exaction in violation of art. 16, § 13 of the Arkansas Constitution (1874). *Richerson v. Bearden,* 278 Ark. 350, 645 S.W.2d 946 (1983). Although *Richerson* involved the sale of a county hospital and the instant case involves the lease of a county hospital, there is no legal distinction between the transactions. Neither the lease of Crawford County Memorial Hospital nor the funds generated by the lease payments constitutes an illegal exaction. Therefore, we find

that the trial court correctly determined that the hospital lease fund and the accrued interest thereon was not an illegal exaction. Our holding is dispositive of the other points raised in appellants' brief relative to the removal of the county as trustee of the funds. Since the use of the lease fund and interest is found not to be an illegal exaction, the county should be the disbursing agent for said funds.

As to the bond surplus fund, however, the chancellor determined that the bond surplus fund constituted an *illegal* exaction. None of the parties appealed from that ruling. The chancellor found that return to the taxpayers of the bond surplus was impossible due to the passage of time. We therefore must determine whether the chancellor ruled correctly that the illegal exaction, which all parties agree cannot be returned to the individual taxpayers who originally paid the tax, could only be returned to the county's general fund. We disagree with the chancellor's assumption that the only remedy for the illegal exaction of the bond surplus was to give it to the county's general fund. A tax dedicated to one purpose cannot be used for another and accordingly, money appropriated from a hospital fund should not be used for county roads. In other cases involving illegal exactions, surpluses have been refunded to the taxpayers. *City of Searcy v. Headlee,* 222 Ark. 719, 262 S.W.2d 288 (1953); *City of Stuttgart v. McCuing,* 218 Ark. 34, 234 S.W.2d 209 (1950). *McCuing* is a case involving surplus funds from an appropriation to improve streets. The funds were illegally put in a Street Fund to repair and maintain existing streets. In *McCuing* this court said:

> Here, the surplus fund in excess of the money necessary to retire the bonds with interest and to complete the work for which collected is substantial. It belongs to the taxpayers who paid it and not to the City. We hold that the duty rested on the City to make refund of the surplus as prayed.
>
> From a practical viewpoint, since in all cases of refunds there must be necessary costs attached, such refunds would be subject to the burden of distribution. Obviously, in some instances where excess funds are to be dealt with, the overall cost of refunding might exceed the surplus, or it might be found that in respect of each taxpayer the rule *de minimis non curat lex* (the law cares not for small things) should apply. In such cases, where no taxpayer's claim could be regarded as substantial, no refunds would be required. In all other cases, however, as indicated, refunds should be made upon appropriate demand.

218 Ark. at 39.

Appellees and appellants both argue that a refund to the taxpayers would be impossible or impractical. Nevertheless, a refund to the taxpayers of record in 1978, the year that the bonds were retired, should be made. The task would be admittedly difficult, but the amount involved, approximately $122,200, is not *de minimis*, and we have held that the taxpayers, in instances of bond surpluses accumulating as a result of the retirement of the original bond issue, are entitled to a refund. This court is of the opinion that there must be a more appropriate remedy here than giving the bond surplus to the county's general fund. The case is therefore remanded to the chancellor on the question of the proper disposition of the bond surplus funds, with instructions to adduce proof to determine how best to effect a refund to the taxpayers of

the surplus bond moneys. If the chancellor determines, after hearing testimony, that such a refund is impossible, the surplus funds should be used for health care, since that was the purpose for which the bonds were originally issued.

The chancellor's ruling is affirmed in part as set out herein and remanded in part for further findings not inconsistent with this opinion.

Affirmed in part: remanded in part.

Purtle and Hays, JJ., not participating.

APPENDIX B

IN THE CHANCERY COURT OF CRAWFORD COUNTY, ARKANSAS

ROBERT E. BELL, PHIL PETERS, MANFORD BURRIS and ARNOLD FELLER, Individually and as Taxpayers

PLAINTIFFS

vs. No. E-83-286

CRAWFORD COUNTY, ARKANSAS, et al

DEFENDANTS

OPINION

(Filed July 24, 1984)

This action was initiated as a Class Action by three principal municipalities of Crawford County, Arkansas, by and through their respective Mayors, named in this case Individually and as Taxpayers, seeking a Temporary and Permanent Injunction against Crawford County, it's County Judge, Justices of the Peace and elected officials, to enjoin the expenditure, disbursement, or alleged diversion by the Defendants of monies derived from two particular funds related to the County Hospital. One fund derives from an excess and continued collection without distribution of tax millage for hospital construction and subsequent improvements which Plaintiffs contend to be an illegal exaction. The bonds were paid off ahead of time and the monies collected thereafter were not distributed. The balance of this fund is presently $122,200.00 in a Hospital Investment Account in a Certificate of Deposit for the County drawing interest. That interest for the years

through 1983 has been paid to the County and deposited in the County General Fund from which it has been disbursed by appropriate Quorum Court Ordinance and Order. That the other fund concerned herein is the lease rental and interest thereon derived from a substantial Lease Agreement by the County to a private "for profit" Corporation. That the initial five years lease rental of $2,500,000 is held by Agreement in Escrow with the various County bank depositories subject to settlement by the County of a Hill-Burton Grant repayment obligation of the County claimed by the U.S. Government. That the interest income from this "Hospital Lease Rental Fund" or deposits is paid to the County monthly, deposited in its General Fund and disbursed therefrom by appropriate Quorum Court Ordinance and Orders. That with regard to the transfer and use of these funds and the interest thereon the Plaintiffs contend the County Defendants have breached their Trust responsibilities; have spent funds excessively and disproportionately for county roads and in the rural part of the County, all to the discrimination of the municipalities who have 50% of the population and of the assessed valuation of the County; and that the County Defendants have demonstrated their inability to manage such funds fairly, properly or proportionately with the municipalities and their population a further breach of trust; and that the cities themselves are better able to manage and provide for the use of said funds for its citizenry and should be substituted as Trustees to receive the municipal residents' proportionate share of these Hospital Funds which belong to all the citizens and residents of Crawford County alike, so that the municipalities as Trustees could administer their citizens' share thereof in a more direct and beneficial way.

That the Plaintiffs contend the use of the tax monies, i.e., from a Hospital Millage Tax for road purposes was in effect a tax in excess of the maximum 3 Mill Road Tax as levied and is therefore unconstitutional; and that the County's use of the Hospital Lease monies and diversion of the interest thereon presently and as planned is using funds for general and special County purposes contrary to the purposes for which and from which the funds were originally voted by the people, i.e., health care, and thus is also unlawful and unconstitutional; and this is a disproportionate use of County Funds for rural roads, bridges and the like, as compared with services and uses in aid of the cities and towns.

The Plaintiffs further contend that the County's actions and omissions with reference to the County Hospital Millage and Lease Rentals as well as interest thereon is in violation of *Article 2, § 21 & 22; Article 16, Sections 9 and 11;* as well as *Amendments 3, 17 and 25* of the *Arkansas Constitution of 1874;* and in addition are in violation of the "due process" and "equal protection" clauses of the *Arkansas and U.S. Constitutions.*

The Plaintiffs seek an accounting of all of these funds by Defendant; and a division of these Hospital Funds as claimed herein, proportionately to the residents of the cities, citing *A.S.A. 17-2002.* They also seek an Injunction against further diversion of funds by Defendants for different purposes than that for which the funds were created or originated; and further, make claim for their costs and attorneys' fees herein.

It should be noted that the Defendants have filed herein an Accounting as amended, and there were no exceptions taken thereto.

It should also be noted that the Defendants' Motion to Dismiss the Plaintiffs' Complaint as a "Class Action" was granted in part, and the municipalities and the Mayors thereof were dismissed as improper parties to bring a Class Action. That however, the Mayors as Individuals and Taxpayers by name were allowed, upon hearing, request, and by Court Order, to proceed in behalf of themselves and all other citizens and taxpayers of Crawford County in this case as a "Class Action" pursuant to both the *Arkansas Constitution, Article 16, Section 13,* and *ARCP-23.*

That this case has so proceeded by Plaintiffs upon Complaint as amended with their contentions generally set forth above with one additional contention worthy of note. That is the Plaintiffs contend during a period of transition, confusion and controversy following the termination of the Hospital Lease with the Sisters of St. Benedict, a "non profit" organization, thru the various lease proposals and negotiations resulting in the private "for profit" Lease Agreement with Humana Medical Center, Inc., the County Judge and various Justices of the Peace met with the Mayors, City Officials and/or Councilmen of the municipalities concerned to solicit their support and help for the proposed Lease Agreement with promises of sharing the revenue receipts between the counties and the municipalities. That the testimony in the case supports a finding of such discussions, but a difference of opinion as to what was promised or offered in exchange for this support. That the testimony and evidence is wanting however with reference to any written document or formal Ordinance, or authorized Agreement as required by law to support or enforce such an Agreement. That is to say no formal

Quorum Court authorization therefor is found to exist; and the County Judge and Justices of the Peace individually could not bind the County governing body unless it had acted as required by law, any more than the Mayor or Councilmen could individually bind their governing body. That in any event there is no statutory or constitutional authority cited or found which provides for an arrangement of the kind proposed with reference to the division of County monies, property or the management thereof, or as advocated for by Plaintiffs herein.

The Defendants were found by the Court to be parties Defendant in their elected capacities herein and not in their individual capacities.

The Defendants contend that the Plaintiffs have not stated a cause of action for which relief can be granted; and that this Court lacks Jurisdiction in any event. That also the Plaintiffs' claims and cause are not properly certified as a "Class Action"; and in any event the Plaintiffs' claims are barred by laches and the Statute of Limitations.

The Defendants contend the interest from the tax refund was spent by the Defendants, i.e., the County, in good faith for the use and benefit of the citizens and taxpayers of Crawford County.

The Defendants further contend the funds concerned properly belong to Crawford County and by law must be managed and disbursed by Crawford County and not by the individual taxpayers or municipalities even as Trustees for their respective citizenry.

The Defendants further contend that the funds are not illegal exactions; that it is impractical or impossible

to distribute the funds to the taxpayers from whom collected as Plaintiffs have also alleged; and that it is the County which has collected the funds in behalf of all the taxpayers, and the County is the proper governmental entity to oversee the management and expenditure of such funds in behalf of all of the County's citizens and taxpayers. That accordingly Defendants contend the Plaintiffs' claims should be denied and dismissed.

It should be noted that all parties contend and the testimony and evidence particularly that of Crawford County Assessor, Mr. Kenneth Owen, supports the mutual contentions that it would be impractical, if not impossible to return the excess monies collected from the bond issue to the taxpayers who paid it. That many of these people cannot be located and the expense of trying to do so would be perhaps as costly as the funds on hand.

That from a review of the facts, and circumstances of this case, as presented by the pleadings, testimony, evidence, exhibits, stipulation, and statements of counsel, and Memorandum Briefs of authorities, the basic issues are as to the ownership of the hospital related funds, and the appropriate use and disbursement thereof.

It is this Court's considered opinion that the continued collection and non-distribution of the hospital bond monies after payoff was an "illegal exaction." (See *Arkansas Constitution, Article 16, Section 13;* see also *Mackey v. McDonald,* 255 Ark. 978, 504 SW2d 726, 733 (1974)). That however, due to the passage of time without question regarding the over-collection of the bond issue millage for hospital construction and repair, it is now impractical, too costly, and probably impossible to return the precise tax

overpayment to the particular taxpayers from whom collected. That the $122,200 bond excess on deposit plus accrued interest in the "Hospital Investment Fund" is the property of Crawford County, Arkansas. That it was collected for a specific purpose and should have been used for hospital purposes. (See *Arkansas Constitution, Article 16, Section 11; City of Stuttgart v. McCuing,* 218 Ark. 34, 234 SW2d 209, (1951); and *City of Searcy v. Headlee,* 222 Ark. 719, 262 SW2d 188, (1953)). That it is no longer needed for this purpose under the existing hospital program and should therefore by appropriate Resolution, Ordinance and Order of the Crawford County Quorum Court be returned to the Crawford County General Fund to be utilized for some general purpose or purposes as provided by law for the general use and benefit of all the citizens and taxpayers of Crawford County. That it has been testified to and indicated by the Crawford County Officials that a health center, as well as a new jail, or other public facilities are needed and it is within the realm of expectation of the citizens of the county that they will all be treated fairly and proportionately with the use of these funds for a comparable or general county purpose. (See *Morton v. Baker,* 254 Ark. 444, 494 SW2d 122, (1973); *Myles v. Gordon,* 234 Ark. 525, 353 SW2d 157, (1952); and *Lawrence v. Jones,* 228 Ark. 1136, 313 SW2d 228 (1958)).

That the transfer of the interest from this Bond Fund to the County General Fund was a transfer of county property; and the disbursement of these funds all by appropriate Ordinance of the Quorum Court and Order of the County Judge was proper. (See *A.S.A. 17-4001* et seq, particularly *17-4003* and *4004;* also *Myles vs. Gordon,* supra; and *County Board of Education vs. Morgan,* 182 Ark.

1110, 34 SW2d 1063, (1931)). That objection at this time is barred by laches, and by the fact that a contest of such County Court action could be affected only by appeal to the Circuit Court and not by a collateral attack in this case. (See *Arkansas Constitution Article 7, Section 33, A.S.A. 27-2001; Hughes vs. Jackson,* 213 Ark. 243, 210 SW2d 312; *Jones vs. Capers,* 231 Ark. 870, 333 SW2d 242; *Hardin vs. Gautney,* 204 Ark. 723, 164 SW2d 427; *Cook vs. Burchfield,* 258 Ark. 312, 523 SW2d 925 (1975)).

That having accordingly dealt with the "Hospital Bond" or "excess millage tax fund" we turn now to the fund hereinafter described as the "Hospital Lease Fund" and the issues raised therewith.

The Crawford County Memorial Hospital was constructed and improved by vote of the people of Crawford County who approved a tax millage to pay a bond issue used to fund the same. The hospital belongs to Crawford County and its people. The County's property is managed by the elected officials of Crawford County, i.e., the County Quorum Court, the County Judge, and in this case the County's appointed Hospital Board of Governors. It is the function of the Quorum Court and County Judge to not only manage, but also to approve Leases of County property or authorize the sale thereof. (See *Arkansas Constitution, Article 7, Section 28,* and *Amendment 55; Maroney vs. Universal Leasing Corp.,* 263 Ark. 8, 562 SW 2d 77 (1978); and *A.S.A. 17-304* and *317,* particularly *A.S.A. 17-1501* to *17-1504;* and *Arkansas Constitution, Amendments 17 and 25;* also *Proctor vs. Hammons,* 277 Ark. 247, 640 SW2d 800 (1982)). That while the hospital was built and equipped by tax monies that obligation has

been satisfied. That the lease monies are however income from the lease of County property and not taxes, and are thus not an illegal exaction. These monies both lease rental and interest thereon are derived from a lawful governmental activity of the County authorized by State Law. (See *A.S.A. 17-1504*). It should be noted that the power and authority of county government has been increased by the adoption of Amendment 55 to the Arkansas Constitution. (See *A.S.A. 17-301* et seq and *Arkansas Constitution Amendment 55*). That in this instance the County government has properly entered into a written Lease and Escrow Agreement for a long term to a private "for profit" corporation with lease rentals paid and on deposit pending resolution of a U.S. Government claim for a County obligation for Hill-Burton reimbursement not as yet determined or resolved. That the County has been receiving the interest from this lease payment deposit and has by appropriate Ordinance and County Court Order deposited same to its General Fund and disbursed such for County purposes. (See *Morton vs. Baker,* supra; *Myles vs. Gordon,* supra; *A.S.A. 17-603* and *17-605; A.S.A. 17-3903* and *17-4004*). That it follows from what has been said with reference to the "Hospital Bond Fund", that the lease rental and interest thereon are monies or properties of the County. That as such and considering the origin of such funds they should be handled in such a way as to provide fairly and proportionately beneficial application of the funds to general County purposes for all of the citizens and taxpayers of the County. That however, the nature of the two funds are different; and the County Government certainly has the constitutional and statutory authority, as well as sole responsibility for the management,

investment and disbursement of these funds for the provision of services and benefits to its citizens and taxpayers.

That in view of the findings of the Court with reference to the two funds aforementioned the basic issues of this case are accordingly determined; and the contentions of the parties to the contrary all as hereinabove set forth are denied and dismissed for want of proof and want of equity. That this is particularly true of Plaintiffs' claims of constitutional violation and for Injunctive relief.

That further each party shall pay their own fees and costs herein; and this Court will continue Jurisdiction as may be needed herein.

IT IS SO ORDERED AND DECREED THIS 20th day of July, 1984.

/s/ Warren Kimbrough
CHANCELLOR

APPENDIX C

OFFICE OF THE CLERK
SUPREME COURT OF THE STATE OF ARKANSAS
ARKANSAS COURT OF APPEALS
LITTLE ROCK

December 9, 1985

Re: 85-36 Robert E. Bell et al
v. Crawford County et al

The Court made the following order in the above styled case today:

"Petition for Rehearing is denied.
Purtle and Hays, JJ., not participating."

Sincerely yours,

/s/ Dona L. Williams, Clerk